

DAN CROTTS

DECEMBER 9 (legislative day, DECEMBER 7), 1943.—Ordered to be printed

Mr. WILSON, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 1311]

The Committee on Claims, to whom was referred the bill (H. R. 1311) for the relief of Dan Crotts, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts will be found fully set forth in House Report No. 728, Seventy-eighth Congress, first session, which is appended hereto and made a part of this report, and your committee concur in the recommendations of the House.

[H. Rept. No. 728, 78th Cong., 1st sess.]

The Committee on Claims, to whom was referred the bill (H. R. 1311) for the relief of Dan Crotts, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

The amendment is as follows:

Page 1, line 6, strike out the figures "\$5,000", insert in lieu thereof the figures "\$2,500".

STATEMENT OF FACTS

It appears that on September 26, 1941, Paul Crotts, aged 4 years, was struck and fatally injured by a truck operated by the National Youth Administration. The driver of the truck, Theron Bartlett, of Russellville, Ark., aged 26 years, was employed by the National Youth Administration as a truck driver. The accident occurred on United States Highway No. 64, near Gin Town, Ark.

The Government truck was being operated in a posted school zone when the accident occurred. At a point where the accident occurred, a Ford sedan was parked on the south side of the highway, off the curb and facing east. Another car, the property of Mr. Dan Crotts, was on the north side of the highway somewhat to the east. The National Youth Administration truck was proceeding east on the highway at a speed estimated to be between 32 and 35 miles per hour. The child and his mother were on the south side of the highway, ahead of the parked car. The child started across the road in a northeasterly direction, toward his father's car, entering upon the highway immediately in front of the parked car and directly in the path of the Government truck.

Your committee is of the opinion that the death of the Crotts child was caused by the negligent operation of the driver of the Government truck, in that he was not keeping a proper lookout and at a high, dangerous, rate of speed, especially

through a school zone. Your committee disagrees with the statement made by the Director of the National Youth Administration, that 32 to 35 miles per hour through a school zone was not a dangerous rate of speed. Had the driver been driving at a normal rate of speed through a school zone, he could have had his truck under proper control and the accident could have been avoided.

Therefore, your committee recommend that the bill be amended to read "\$2,500" instead of "\$5,000" and recommend favorable consideration to the proposed legislation, and append hereto the report from the War Manpower Commission, together with other pertinent evidence.

OFFICE FOR EMERGENCY MANAGEMENT,
WAR MANPOWER COMMISSION,
Washington, D. C., June 11, 1943.

DAN R. McGEHEE,
*Chairman, Committee on Claims,
House of Representatives, Washington, D. C.*

DEAR MR. McGEHEE: Reference is made to your request for a report of the facts in the case which is the subject of H. R. 6663, "A bill for the relief of Dan Crotts," together with an opinion on the merits of the bill. Your request was addressed to Mr. Aubrey Williams, Administrator, National Youth Administration. The National Youth Administration is now under my supervision, and I am pleased to submit the following report which is based upon the National Youth Administration file in the case.

The facts with respect to the accident are, briefly, as follows: On September 26, 1941, Paul Crotts, age 4 years, was struck and fatally injured by a truck owned and operated by the National Youth Administration. The driver of the truck, Theron Bartlett, of Russellville, Ark., age 26 years, was a licensed driver employed by the National Youth Administration as a truck driver. The accident occurred on United States Highway No. 64, at a place reported to be about 1 mile from Gin Town and about 2 miles west of Mulberry, Crawford County, Ark., and occurred at about 4 p. m. The accident occurred within a posted school zone, at a point beyond the school and just before the truck was leaving the school zone. The National Youth Administration vehicle was proceeding east on the highway at an estimated speed of 32 to 35 miles an hour. At the point where the accident occurred, a Ford sedan was parked on the south side of the highway, off the curb and facing east. Another car, the property of Mr. Dan Crotts, was on the north side of the highway somewhat to the east. It is not clear whether this car was on the side of the highway, as shown by a diagram contained in the file, or on a side road leading north, as stated by Mrs. Robert Bolles, a witness whose affidavit is included in the file. Mrs. Dan Crotts and the child were on the south side of the highway ahead of the parked car. The child started across the highway in a northeasterly direction, toward the Crotts car, entering upon the highway immediately in front of the parked car and directly in the path of the truck.

On the basis of the evidence contained in the National Youth Administration file, I am of the opinion that the statement in H. R. 6663 that "* * * said death was caused by the negligent operation of the driver of the truck above-mentioned in that said driver at the time of the injuries aforesaid was driving said truck without keeping a proper lookout and at a high, dangerous, and unlawful rate of speed, and on that part of the highway which was then and there legally posted as a school zone * * *" is not supported by the evidence.

The speed at which the vehicle was being operated, as indicated by the written statement of the driver of the truck and by the State police investigators' report, was about 32 to 35 miles per hour. The fact that the truck was being operated at a moderate speed is substantiated by the written statement of Mrs. Robert Bolles, an eyewitness, to the effect that the "* * * truck was not driving very fast." The State police investigators reported that 50 miles per hour was the "maximum safe speed under conditions prevailing." The lawful speed limit, as established by the Uniform Act Regulating Traffic on the Highways of Arkansas, act 300 of the acts of 1937, as amended, section 51 (b), was 45 miles per hour.

The fact that the accident occurred within a posted school zone is, of course, a factor for consideration in determining whether the truck was being operated at a lawful speed. However, investigation made by National Youth Administration personnel indicates that the school zone involved had no speed limit posted. The State law provides that where speeds are not posted, the speed shall be "reasonable and prudent under the conditions then existing." It should be noted, in that connection, that the State police investigators estimated 50 miles per hour as the safe speed "under conditions prevailing." Their report also shows the following

conditions: Clear weather, daylight, no defective condition of vehicle, open country, straight, level road, concrete surface, and dry road condition. Under these conditions, there is, in my judgment, no basis for a finding that a speed of 32 to 35 miles per hour was a "high, dangerous, and unlawful rate of speed."

With respect to whether the driver of the truck was keeping a proper lookout, the statements of the driver and of Mrs. Robert Bolles, the eyewitness referred to above, indicate that the child was not visible to the driver of the truck as he approached the parked car, and that he had no means of being aware of the presence of a small child in the vicinity of the parked car until the child entered upon the highway.

It appears that the child darted out from in front of the sedan parked on the right-hand side of the highway, and entered the highway in front of the truck when it was only a short distance away. Mrs. Bolles stated that "Mrs. Dan Crotts, child's mother, was beside the child on the south side of highway and immediately in front of our car * * * the view of truck driver to see child was obstructed by car on south side of highway."

The relief proposed to be granted by the bill under consideration appears to be predicated partly upon the fact that the accident occurred within a school zone. Reports of National Youth Administration personnel are to the effect that the accident occurred at a time when children were not coming from or going to the school, after the school had been passed, and just before the truck was leaving the school zone. No facts have been disclosed by the investigation of this matter made by the National Youth Administration which indicate that the driver of the truck should have been put on notice of the presence of a small child in the vicinity.

Morel v. Lee, 33 S. W. (2d) 1110, 182 Ark. 985, and *Self v. Kirkpatrick*, 110 S. W. (2d) 13, 194 Ark. 1014, are cases in point. In *Morel v. Lee*, negligence on the part of the driver of a car which struck and killed a small child was based on the fact that the attention of the driver was distracted by watching another child who ran out from in front of a parked car to the extent that he did not observe the child who was struck. In *Self v. Kirkpatrick*, another case involving the death of a child who was crossing a street, the driver had seen children at the side of the road before the child who was struck entered upon the roadway, and was held to have been negligent. In the absence of any evidence in this case that the child was or could have been seen in the vicinity of the highway, and in the absence of any evidence that the attention of the driver was diverted from the roadway ahead, there is, in my opinion, no basis for a finding that the driver was "driving said truck without keeping a proper lookout."

No civil action was ever brought against Theron Bartlett, the truck driver, on account of this accident. However, Mr. Bartlett was convicted of negligent homicide by the municipal judge for the city of Van Buren, Crawford County, Ark., on October 7, 1941. In my judgment, such conviction should not influence the decision with respect to the claim. Although the National Youth Administration file discloses considerable correspondence between the Washington office of the National Youth Administration and field personnel in the Arkansas region with respect to obtaining the court's decision and the testimony of the witnesses, no record of the testimony is available. It is, therefore, impossible to evaluate the evidence upon which the conviction was based. While an appeal was granted to Mr. Bartlett, it was never perfected, apparently due to reduction of the fine originally imposed by the court to the nominal amount of \$25 and costs.

For the above reasons, I am of the opinion that the claim is not meritorious. However, in the event that the committee is advised of facts which have not been brought to light by the investigation conducted by the National Youth Administration which would justify the finding of negligence contained in the proposed bill, I am of the opinion that the sum of \$5,000 is an excessive award. An examination of similar cases in which the Arkansas rule with respect to measure of damages for the death of a minor child have been discussed indicates that the maximum award of damages that could be anticipated in a civil action is approximately \$2,500. (*Morel v. Lee*, *supra*; *Missouri Pacific Railroad Co. v. Maxwell*, 109 S. W. (2d) 1254, 194 Ark. 1014; *Interurban Railway Co. v. Trainer*, 233 S. W. 816, 150 Ark. 19; *Hughey et al. v. Lennox*, 219 S. W. 323, 142 Ark. 593.)

Pursuant to your request, I am enclosing herewith copies of documents contained in the National Youth Administration file which are material to the facts and a decision on the bill.

Sincerely,

PAUL V. McNUTT,
Chairman.

AFFIDAVIT OF MRS. OPAL CROTTS

STATE OF ARKANSAS,

County of Crawford, ss:

I, Mrs. Opal Crotts, age 36, post office being Alma, Ark., route 2, hereby state upon oath that I am the mother of Paul Crotts, and on the afternoon he was killed he and I were walking on the south, or right side, of the highway facing east, 6 or 8 feet from the pavement. Facing the highway from the home of Mr. and Mrs. Paul Bowlin the National Youth Administration truck came from the left, traveling east and the truck was traveling on the right, or south side, of the pavement. The truck was traveling at a speed of approximately 35 miles per hour through a school zone, which is posted by signs as a school zone. In crossing the highway, Paul approached the National Youth Administration truck from the right-hand side. There was some visitors at the Bowlin home, who had parked their car on the shoulder and south of the pavement; however, Paul was going diagonally across and about 12 feet from the car, which should not have obstructed the view of the truck driver. The child was about 60 feet from the truck at the time he started across the highway. He was trotting across when the truck struck him.

I further state that Paul was born March 24, 1937, at Charleston, Ark.

Signed this the 14th day of January 1942.

Mrs. OPAL CROTTS.

Subscribed and sworn to before me this the 14th day of January 1942.

[SEAL]

T. J. HOUSE,
Mulberry, Ark.

Commission expires December 9, 1942.

AFFIDAVIT OF MAXINE CROTTS

STATE OF ARKANSAS,

County of Crawford, ss:

I, Maxine Crotts, age 10, and in the fifth grade, on September 26, 1941, went with Paul Crotts and mother to Vine Prairie School building, located about 2 miles west of Mulberry, Ark., to meet the Mulberry school bus to get my sister, Marilyn, who had missed the first bus. We parked our car a few feet north of Highway No. 64, on a road joining the school grounds on the left side of the building. While there I saw some children near the schoolhouse waiting for transportation. We waited about 5 minutes, then Paul and mother went diagonally across the highway, to the left side of the Paul Bowlin home, where some boys were playing, to ask about the school bus. I remained in the car and saw Paul and mother retrace their steps back to the ditch line. The Mrs. Bowlin called mother; when she turned around, she released Paul's hand and he came trotting across the highway. There was a car parked in front of the Bowlin home 2 feet from the pavement. Paul entered the pavement about 12 feet in front of the parked car. I saw the National Youth Administration truck approaching from the left of Bowlin's home and was about 60 feet away when Paul entered the highway. I saw the driver turn his head and talk with a companion. Paul was within a step of the center line, on the highway, when he was struck by the truck. He was pulled under the front left wheel and was thrown in midair between the front and back wheel; as he turned a flip he was pulled under the back wheel. The driver didn't make any effort to stop the truck until he left the body on the pavement, which was measured 81 feet. This was between the signs marked "School Zone," written in black letters on yellow background.

I, Maxine Crotts, state that Paul was my brother and I was an eyewitness to the accident. The above statements are true.

Signed this the 14th day of January 1942.

[SEAL]

MAXINE CROTTS.

Subscribed and sworn to before me this the 14th day of January 1942.

T. J. HOUSE,
Notary Public, Mulberry, Ark.

Commission expires December 9, 1942.

AFFIDAVIT OF MRS. BESS BOWLIN

STATE OF ARKANSAS,
County of Crawford, ss:

I, Mrs. Bess Bowlin of Mulberry, Ark., and whose age is 50 years, hereby state upon oath that the matters of fact stated in this affidavit are true:

On the afternoon of September 26, 1941, and about 3:45 p. m., I was standing on the front porch of my home, near Mulberry, Ark., talking to Mrs. Opal Crotts, of Alma, Ark., when a National Youth Administration truck, driven by Theron Bartlett, passed by. Paul Crotts, small son of Mrs. Opal Crotts, was with his mother for a few minutes during our conversation but had attempted to cross the Highway No. 64, which lies directly north of my home, to the Crotts car parked on the opposite side of the highway from my home. The truck struck the child and dragged him for several feet and immediately after the accident the child was brought to my home. I further state the highway in front of my home, and where the accident occurred, is a school zone.

Signed this the 20th day of December 1941.

[SEAL]

Mrs. BESS BOWLIN.

Subscribed and sworn to before me this the 20th day of December 1941.

T. J. HOUSE,
Mulberry, Ark.

Commission expires December 9, 1942.

STATE OF ARKANSAS,
FIFTEENTH JUDICIAL CIRCUIT,
Van Buren, Ark., December 12, 1943.

STATE OF ARKANSAS,
County of Crawford, ss:

Comes Carl K. Creekmore, under oath, this 12th day of December 1941 and states that he is the deputy prosecuting attorney for Crawford County and that as such he prosecuted and convicted Theron Bartlett of the crime of negligent homicide as a result of his running into and killing 4-year-old Paul Crotts while driving a National Youth Administration truck. That Paul Crotts was the son of Mr. and Mrs. Dan Crotts of near Mulberry, Ark.

CARL K. CREEKMORE,
Affiant.

Subscribed and sworn to before me this 12th day of December 1941.

[SEAL]

JOHN BURROUGH,
Circuit Clerk.

AFFIDAVIT OF MRS. OPAL CROTTS

STATE OF ARKANSAS,
County of Crawford, ss:

I, Mrs. Opal Crotts, do solemnly swear that the matters of fact stated in this affidavit are true:

I am the mother of Paul Crotts, who was killed as the result of a National Youth Administration truck running into him in front of Paul Bowlin's home about 2 miles west of Mulberry, Ark., and in front of the Vine Prairie School Building. My son was killed in the afternoon of September 26, 1941. The driver of the National Youth Administration truck was Theron Bartlett, who was convicted of negligent homicide and 6 weeks after this accident he had another serious accident in Fort Smith, Ark. On the afternoon of September 26, I was standing in front of Paul Bowlin's home, time being about 3:45 p. m., holding Paul's hand and in finishing a conversation with Mrs. Paul Bowlin and I let go of Paul's hand; when I turned around the truck had knocked him down, near the black line or center of highway. He was thrown several feet and when I got to him, being the first to reach him, he was dead.

Signed this the 16th day of December 1941.

Mrs. OPAL CROTTS,
Route 2, Alma, Ark.

Subscribed and sworn to before me this the 16th day of December 1941.

[SEAL]

T. J. HOUSE,
Mulberry, Ark.

Commission expired December 9, 1942.

AFFIDAVIT OF LONNIE BATCHELOR

STATE OF ARKANSAS,

County of Crawford, ss:

Lonnie Batchelor, whose age is 31 years, and whose post-office address is Van Buren, Ark., being first duly sworn on oath states:

That he is the judge of the Municipal Court of Van Buren, Ark., and that he personally knows that Theron Bartlett was convicted in said Municipal Court of Van Buren, Ark., on a charge of negligent homicide as a result of the said Theron Bartlett running into, striking, and killing one Paul Crotts, small son of Dan Crotts, of near Mulberry, Ark., while the said Theron Bartlett was driving a National Youth Administration truck. That this accident happened near Vine Prairie School House in Crawford County, Ark.

LONNIE BATCHELOR.

Subscribed and sworn to before me this 18th day of December 1941.

[SEAL]

EDGAR L. MATLOCK,
Notary Public.

My commission expires January 22, 1945.

STATEMENT

JANUARY 10, 1942.

Mr. Dan L. Crotts, Mulberry, Ark., to Dr. Shelley C. Grant, debtor:

Sept. 26, 1941, to visit, son----- \$3. 50

CHARLESTON HARDWARE CO.,
Charleston, Ark., January 9, 1942.

Statement of account for Dan Crotts:

Sept. 27, funeral----- \$95

Sales tax----- 1

Total----- 96

Paid in full.

CHARLESTON HARDWARE FUNERAL HOME,
FRANCES CLASSE.

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